**THE HON'BLE SRI JUSTICE C.V. RAMULU**

Wednesday, the 13th day of June,2007

**W.P.No.14899 of 1998**

Between:-

C. Sathya Murthy … Petitioner

and

The Govt.of A.P., rep. by its
Prl.Secretary, Education
Department, Secretariat,
Hyderabad and others …
Respondents

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**W.P.No.14899 of 1998**

**ORAL ORDER:**

This Writ Petition is filed challenging the Proceedings issued by the Director of Collegiate Education, Andhra Pradesh, Hyderabad, in L.Dis.No.589/PC.II-3/96, dated 4-4-1998, whereunder the request of the petitioner for regularization of his services in the post of Lecturer in Economics in 3rd respondent-B.T.College, Madanapalli, Chittoor District, was rejected on the ground that the petitioner had not fulfilled the vital condition of three academic years of service as on 30-7-1991 or five academic years of service as on 25-11-1993 as stipulated in G.O.Ms.No.328, Education, dated 15-10-1997.

It is the case of the petitioner that he is a Post-Graduate in Economics and also obtained Ph.D. in Economics in the year 1990 and was appointed as a Lecturer in Economics in the 3rd respondent-College with effect from 10-8-1992 against a clear aided vacancy. In fact, earlier he worked as a part-time Lecturer in Economics in Sri Vasavi Arts, Commerce and Science College, Chagalamarry, Kurnool District from 10-7-1989 to 28-2-1990 and again upto 6-3-1992 in the U.G.C. lien vacancy. According to the petitioner, though he has been working continuously since 1992 in the 3rd respondent-College, his services were not regularized and he was not put on regular time scale. Earlier, he filed a Writ Petition being W.P.No.2307 of 1996 and the same was disposed of on 20-3-1998 directing the Government to consider his case for regularization of his services as

Lecturer in Economics in accordance with G.O.Ms.No.328, dated 15-10-1997 and pass appropriate orders. It appears, the 2nd respondent has passed the impugned Order in pursuance of the said direction.

It is the case of the petitioner that G.O.Ms.No.328, Education, dated 15-10-1997 was issued insofar as Education Department is concerned to be in consonance with G.O.Ms.No.212, Finance & Planning (FW) Department, dated 22-4-1994 and in the impugned rejection order except stating that the petitioner has not put in five academic years of service as on 25-11-1993 stipulated in G.O.Ms.No.328, dated 15-10-1997, nothing has been stated. Further, learned counsel for the petitioner states that the very condition of completion of five academic years of service as on 25-11-1993 in the G.O. issued on 15-10-1997 itself is arbitrary and illegal. Apart from that, completion of five years of service as contemplated in G.O.Ms.No.328, dated 15-10-1997 should be calculated as on the date of consideration of the case of the petitioner i.e. 4-4-1998. If this is taken into consideration, petitioner's case squarely fits into the teeth of G.O.Ms.No.328, dated 15-10-1997 and he is entitled for regularization of his service in the 3rd respondent-College against an aided post of Lecturer in Economics.

A detailed counter affidavit has been filed on behalf of respondents 1 and 2 denying the allegations made by the petitioner. It is asserted that the very appointment of the petitioner was irregular and the G.Os. issued earlier, in this regard, were superseded and new guidelines for regularization of services of part-time Lecturers in private aided colleges have been formulated. Respondent No.2, after verifying the service particulars of the petitioner with reference to G.O.Ms.No.328, dated 15-10-1997, rejected the request of the petitioner for regularization of his services, as he did not satisfy the

conditions stipulated in the said G.O. Hence, the impugned Order passed by the 2nd respondent cannot be said to be either arbitrary or illegal.

Respondent No.3 filed a separate counter reiterating the same stand as was taken by respondents 1 and 2. It is further stated that the petitioner was not appointed after subjecting him to a duly constituted selection committee and the petitioner is not entitled for selection as per G.O.Ms.No.328, dated 15-10-1997 and the vacancy needs to be filled up by Backward Class 'A' or Scheduled Caste candidate.

Heard both sides and perused the impugned Order and other material made available on record.

I am in complete agreement with the submissions made by the learned counsel for the petitioner that the requirement of completion of five academic years of services for the purpose of regularizing the services of the petitioner should have been as on the date of consideration i.e., 4-4-1998 and not 25-11-1993, which was much prior to the issuance of G.O.Ms.No.328, dated 15-10-1997 itself. In similar circumstances, when G.O.Ms.No.212, dated 22-4-1994 and the conditions laid down therein i.e., completion of five years as on 25-11-1993 had come up for consideration before this Court, this Court by an Order in W.P.No.8151 of 1996, dated 24-3-2005 following the Judgment in **DISTRICT COLLECTOR/CHAIRMAN v. T. DEVENDERPAL SINGH**[1] has categorically held that the criterion of completion of five years of service should have been taken into consideration as on the date of consideration of the case of the individual and not as on the cut-off date prescribed in the G.O. Therefore, the case of the petitioner needs to be reconsidered computing the total service rendered by him as on the date of

consideration by the 2nd respondent i.e. 4-4-1998 and not 25-11-1993. Further, a Division Bench of this Court in Writ Petition No.15921 of 1989 and batch, dated 31-12-1996 had considered similar cases where the appointments were contrary to the instructions issued by the Government in G.O.Ms.No.524, dated 20-12-1988 held that the Government shall constitute a committee and the Management shall place all the papers before the said committee. Of course, now the committee constituted as per the directions of this Court is not in existence. But, that does not mean that the Government cannot consider a hard case of this nature, where the petitioner is working continuously for the last 15 years i.e. from 10-8-1992 against an aided vacancy and he is also a Ph.D. holder in Economics. Further, there is no complaint from the Management of the College as to the performance of the petitioner as a Lecturer in Economics. That apart, an aided vacancy is also available in the College. The petitioner has put in more than 15 years of continuous service and highly qualified. He would be more useful to the institution than a raw junior. Further, petitioner may not get any public employment at this age.

Insofar as the contention of the 3rd respondent that the vacancy of Lecturer in Economics has to be filled up by B.C. 'A' or S.C. candidate is concerned, this Court in **GOVT.OF A.P. v. P. THIRUMALA DEVI**[2] held that in relation to aided or unaided Schools, the State, in exercise of its regulatory power, cannot direct to implement its reservation policy and there is no power conferred upon the State to direct reservation of the posts in the School service. The said decision was affirmed by the Supreme Court in Civil Appeal Nos.6575-6576 of 2004, dated 14-3-2007.

In the facts and circumstances of the case, respondents 1 and 2 are directed to consider the case of the petitioner, taking into account

the service rendered by him as on 4-4-1998 (which is more than 5 years) and regularize his services in the cadre of Lecturer in Economics and pass appropriate orders, without reference to the impugned Order, within a period of eight (8) weeks from the date of receipt of a copy of this order. Till such consideration, the respondents shall continue the petitioner in the post held by him as on today.

With the above directions, the Writ Petition is disposed of. No order as to costs.

13-6-2007

prk

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[1] 1998 SCC (L&S) 1747

[2] 2001-DT(AP)3-21 = 2002 ALD Supp.91